ASM Development Sdn Bhd v Nam Sin & Sons Sdn Bhd

HIGH COURT (MELAKA) — CIVIL SUIT NO 12–20 OF 2000
AHMAD MAAROP JC
9 DECEMBER 2000

Civil Procedure *— Judgments and orders — Application to fix time — Order to make payment forthwith — Whether 'forthwith' sufficient expression of time — Whether applicant may apply under O 30 r 6(2) Subordinate Courts Rules 1980 to fix time limit for making payment — Subordinate Courts Rules 1980 O 30 r 6(2)*

On 26 February 1999 the sessions court recorded a consent order ordering the appellant to pay forthwith to the judgment creditor/respondent a sum amounting to RM182,9996.27 being the debt owed by the appellant and payable to the judgment debtor. On 15 December 1999, the respondent applied to the sessions court under O 30 r 6(2) of the Subordinate Courts Rules 1980 ('the SCR') for an order that the appellant do pay the said sum within seven days from the date of service of the order. The application was allowed on 24 March 2000. The appellant appealed. The issue before the court was whether the application by the respondent and the subsequent order dated 24 March 2000 were properly made under O 30 r 6(2) of the SCR. The appellant contended that the word 'forthwith' was a sufficient expression of time. As the order dated 26 February 1999 had already fixed a time limit for the appellant to make payment, the application by the respondent under O 30 r 6(2) of the SCR was misconceived because the provision under O 30 r 6(2) of the SCR was to cover a situation where no time limit was specified in the order in question.

Held, allowing the appeal:

The word 'forthwith' is a sufficient expression of time. Thus, the order of the sessions court dated 26 February 1999 had already fixed a time frame within which the appellant should make the payment to the judgment creditor. Under that order the appellant shall, without any delay, make the payment to the judgment creditor. Accordingly, the application by the respondent under O 30 r 6(2) of SCR was misconceived since O 30 r 6(2) of the SCR is not applicable in a case in which the court order has already fixed a time limit within which an act is to be done. The sessions court therefore erred in making the order dated 24 March 2000 (see pp 403A–B, 405A–B).

[Bahasa Malaysia summary

Pada 26 Februari 1999 mahkamah sesyen telah melaporkan satu perintah kebenaran memerintahkan perayu untuk membayar dengan serta merta kepada pemiutang penghakiman/responden sejumlah wang RM182,9996.27 yang merupakan hutang yang perlu dibayar oleh perayu dan mesti dibayar kepada penghutang penghakiman.

Pada 15 Disember 1999, responden memohon kepada mahkamah sesyen di bawah A 30 k 6(2) Kaedah-Kaedah Mahkamah Rendah 1980 ('KMR') untuk satu perintah agar perayu membuat bayaran bagi jumlah tersebut dalam tempoh tujuh hari daripada tarikh penyampaian perintah tersebut. Permohonan tersebut telah dibenarkan pada 24 Mac 2000. Perayu telah membuat rayuan. Isu yang dihadapkan ke mahkamah adalah sama ada permohonan oleh responden dan perintah berikutnya bertarikh 24 Mac 2000 telah dibuat dengan betul di bawah A 30 k 6(2) KMR.Perayu menegaskan bahawa perkataan 'segera' (forthwith) adalah satu ungkapan yang mencukupi tentang masa. Memandangkan perintah bertarikh 26 Februari 1999 telahpun menetapkan satu had masa untuk perayu membuat pembayaran, permohonan oleh responden di bawah A 30 k 6(2) KMR telah disalah tanggap kerana peruntukan di bawah A 30 k 6(2) KMR sepatutnya meliputi keadaan di mana tidak terdapat had masa yang dispesifikasikan di dalam perintah yang dipersoalkan.

Diputuskan, membenarkan rayuan tersebut:

Perkataan 'segera' (forthwith) adalah satu ungkapan yang mencukupi tentang masa. Oleh itu, perintah mahkamah sesyen yang bertarikh 26 Februari 1999 telahpun menetapkan satu jangka masa di mana perayu sepatutnya membuat pembayaran kepada pemiutang penghakiman. Di bawah perintah tersebut perayu hendaklan, tanpa apa-apa kelewatan, membuat pembayaran kepada pemiutang penghakiman. Oleh demikian, permohonan oleh responden di bawah A 30 k 6(2) KMR telah disalah tanggap memandangkan A 30 k 6(2) KMR tidak terpakai di dalam kes di mana perintah mahkamah telahpun menetapkan satu had masa di mana satu tindakan patut dibuat. Mahkamah sesyen oleh itu telah khilaf di dalam membuat perintah yang bertarikh 24 Mac 2000 (lihat ms 403A–B, 405A–B).]

Notes

For cases on judgments and orders, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2724–2805.

Cases referred to

Carter v Roberts [1903] 2 Ch 312 (refd)

United Malayan Banking Corp Bhd v Chuah Gim Suan [1993] 2 AMR Supp 803 (refd)

Visia Finance Bhd v Export Credit & Leasing Sdn Bhd & Ors [1998] 2 MLJ 705 (refd)

Legislation referred to

Subordinate Courts Rules 1980 O 30 r 6, 6(1), 6(2), O 33 r 4, Form 91

Appeal from: Application Notice Suit No 52–436 of 1998 (Sessions Court, Melaka)

Tan Han Seng (*Mah-Kamaria & Partners*) for the appellant.
Chuah Bee Ang (*Moi NK Koh & Chee*) for the respondent.

Ahmad Maarop JC. : This is an appeal by the appellant (garnishee) against the decision made by the learned judge of the Malacca Sessions Court on 24 March 2000 ordering the appellant to pay an amount of RM182,996.27 into court within seven days from the date a sealed copy of the order was served on the appellant.

The facts of the case relevant to this appeal are as follows:

On 26 February 1999, in the proceeding in Summons No 52–436–98, the Malacca Sessions Court recorded a consent order ordering the appellant to pay forthwith to the judgment creditor a sum amounting to RM182,996.27 being the debt owed by the appellant and payable to the judgment debtor. This said order reads as follows:

> Adalah diperintahkan bahawa Garnishi tersebut hendaklah segera membayar kepada pemiutang penghakiman tersebut jumlah sebanyak RM182,996.27 iaitu hutang yang kena dibayar oleh garnisi tersebut kepada penghutang penghakiman tersebut. Dan bahawa tiada perentah atas kos.

In the application dated 15 December 1999 and amended by the sessions court order dated 18 February 2000, the respondent (judgment creditor) applied to the Malacca Sessions Court for an order that the garnishee do pay to the judgment creditor the sum of RM182,996.27 within seven days from the date of service of the order. The application was made under O 30 r 6(2) of the Rules of the Subordinate Courts 1980 ('the RSC'). The ground advanced in support of the application was that the appellant had failed to comply with the order dated 26 February 1999. The application was made so that a time limit could be fixed for the appellant to comply with the order dated 26 February 1999.

On 24 March 2000, the sessions court allowed the respondent's application and ordered the appellant to pay to the respondent the sum of RM182,996.27, within seven days from the date of service on the appellant of a sealed copy of the order. The order reads:

> Adalah diperintahkan bahawa Garnisi membayar Pemiutang penghakiman jumlah sebanyak RM182,996.27 mengikut perentah bertarikh 26 Februari 1999 yang diperolehi di mahkamah yang mulia ini dalam masa seven hari dari tarikh sesalinan perintah ini yang telah dimeteraikan serta perintah bertarikh 26 Februari 1999 diserahkan kepada Garnisi.

The appeal by the appellant is against the decision of the learned sessions court judge in making the aforesaid order.

The issue before this court in this appeal is whether the application by the respondent and the consequent order dated 24 March 2000 were properly made under O 30 r 6(2) of the RSC? This in turn depends on the issue as to whether the word 'forthwith' is a sufficient expression of time.

It was contended by learned counsel for the appellant, Mr Tan Han Seng that the word forthwith (segera) means as soon as the act could be reasonably done and that word 'forthwith' was a sufficient expression of time. In support he cited the judgment of Bryne J in *Carter v Roberts* [1903] 2 Ch 312. He contended that since forthwith was a sufficient expression of time, the order dated 26 February 1999 had already specified a time limit for the appellant to pay the judgment creditor the sum of RM182,996.27. As the order dated 26 February 1999 had already fixed a time limit for the appellant to make payment, the application by the respondent under O 30 r 6(2) of the RSC was misconceived , because the provision under O 30 r 6(2) of the RSC was to cover a situation where no time limit was specified in the order in question. Mr Tan Han Seng therefore submitted that the respondent application was made under the wrong order and hence the sessions court had no jurisdiction under O 30 r 6(2) of the RSC to specify the time limit of seven days. On this ground alone, he submitted the appeal should be allowed. As an additional ground Mr Tan Han Seng submitted that what the respondent attempted to do was to vary the order dated 26 February 1999. Since that order was a consent order it could only be varied by consent of both parties. In support he cited the case of *Visia Finance Bhd v Export Credit & Leasing Sdn Bhd & Ors* [1998] 2 MLJ 705.

Learned counsel for the respondent Ms Chuah Bee Ang in reply submitted that the order dated 26 February 1999 did not specify the time frame within which the appellant must make payment and until the date this appeal was heard the appellant had not made the payment as ordered. The purpose of the application was therefore to get a court order which specified the time limit for the appellant to make payment. She added that if the appellant still did not comply with the order, the respondent might consider commencing a contempt proceeding against the appellant. According to her, to do that, the respondent had to be sure of the time limit within which the appellant must pay.

Order 30 r 6 of the RSC provides:

> (1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the court shall, without prejudice to O 3 r 5, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time as may be specified therein.
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> (2) Where, notwithstanding O 29 r 6(1), or by reason of O 29 r 6(2), a judgment or order requiring a person to do an act *does not specify a time* within which the act is to be done, the court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.
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> (3) An application for an order under this rule must be made by notice and the notice must, notwithstanding anything in O 7 r 17, be served on the person required to do the act in question. (Emphasis added.)

In my view O 30 r 6 of the RSC clearly provides for two different types of cases. Under O 30 r 6(1) of the RSC, in a case where there is already an order requiring a person to do act within a certain time, the court is

empowered to make an order requiring that act to be done within another time. Whereas O 30 r 6(2) of the RSC is applicable in a case where an order does not specify a time within which an act is to be done. In such a case the court shall have the power to make a subsequent order, requiring the act to be done within a certain time specified in the order. Order 30 r 6(2) of the RSC is not applicable in a case in which a court order has already specified a time limit within which an act is to be done.

The order dated 26 February 1999 was a garnishee order absolute made pursuant to O 33 r 4 of the RSC and was substantially in comformity with Form 91 prescribed under the RSC. The English version of Form 91 uses the word 'forthwith' as being the equivalent of the word 'segera' used in Borang 91 in the Bahasa Malaysia version of the RSC.

According to *Kamus Dewan* (Cetakan Kedua, Edisi Baru) 1991, 'segera' means 'tidak berlengah-lengah lagi, cepat, gesa-gesa, lekas-lekas'.

According to the same dictionary '(dengan) serta-merta' means 'pada ketika itu juga, dengan segera'. In my view the words 'segera' and 'serta-merta' have the same meaning and may be used interchangeably. In English both words mean 'forthwith'. Support for this may be derived from *Kamus Dwibahasa, Bahasa Inggeris–Bahasa Malaysia, Dewan Bahasa dan Pustaka* (1989), according to which 'forthwith' means 'dengan serta-merta, dengan segera, lekas (tidak berlengah-lengah).

I am also of the view that the word forthwith' means 'without any delay or loss of time' audit is a sufficient expression of time. I find support for this view from the judgment in *United Malayan Banking Corp Bhd v Chuah Gim Suan* [1993] 2 AMR Supp 803, in which at p 809, Abdul Hamid Mohamed J (as he then was) said:

> Peguam defendan menghujahkan bahawa perintah itu tidak jelas kerana penggunaan perkataan 'forthwith'.
>
> Saya tidak bersetuju dengan hujah ini. Ini bukan satu kes di mana tempoh untuk melakukan sesuatu tidak disebut langsung. Ia menyebut 'forthwith' (dengan serta merta). Perkataan '*forthwith*' bermakna '*without any delay or loss of time*' — lihat *Nam Bee Rubber Estate Sdn Bhd v Syarikat Tanaman Perak Bhd* [1986] 1 MLJ 29 di ms 34 (Mahkamah Agung).
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> Dalam kes *Thomas v Nokes* (1868) LR 6 Eq 521, di mana k 10, Cons Ord XXIII yang menghendaki:
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> > 'that every decree or order in suit requiring any person to do an act thereby ordered shall state the time within which the act is to be done.'
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> Lord Romilly MR memutuskan:
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> > 'that the word '*forthwith*', *was a sufficient expression of the time within which the act was required to be done within the meaning*' (Emphasis added.)

Accordingly, I accept the submission by learned counsel for the appellant and hold that the order of the Malacca Sessions Court dated 26 February 1999 in directing the appellant to forthwith pay to the judgment creditor the sum of RM182,996.27, had already fixed a time frame within which the appellant should make the payment of RM182,996.27 to the judgment creditor. In my judgment, adopting the meaning of 'forthwith' as explained

in the above case, under that order the appellant shall, without any delay make the payment of RM182,996.27 to the judgment creditor. The upshot of this ruling is that the application by the respondent under O 30 r 6(2) of the RHC was misconceived since, as I have stated earlier, O 30 r 6(2) of the RSC is not applicable in a case in which the court order has already fixed a time limit within which an act is to be done. The Malacca Sessions Court had, therefore, erred on 24 March 2000 in making the order under O 30 r 6(2) of the RSC, directing the garnishee to pay the respondent the sum of RM182,996.27 within seven days from the date of service of a seal copy of that order.

On this ground alone the appellant is entitled to succeed. In the result the appeal is allowed with costs. The order of the Malacca Sessions Court made on 24 March 2000 is set aside.

Appeal allowed.

Reported by Jafisah Jaafar